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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/052,325	03/31/1998	JOHN E. STOCKENBERG	EMC-97-137	9015

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EXAMINER

COLBERT, ELLA

ART UNIT PAPER NUMBER

3624

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/052,325

Applicant(s)

STOCKENBERG ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-16 are pending.
2. Claims 1, 6, 13, and 15 have been amended in this communication filed 04/14/03 entered as amendment D, paper no. 18.
3. The Extension of Time filed 06/02/03 has been entered as paper no. 20.
4. The RCE filed 06/02/03 has been entered as paper no. 21.
5. The 112 Second paragraph rejection has been overcome by Applicant's amendment to claim 13.

Continued Examination Under 37 CFR 1.114

6. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/02/03 has been entered.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US Ji et al, hereafter Ji in view of (US 6,092,066) Ofek

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With respect to claim 1, Ji teaches, at least one first communication mechanism residing on both the first and second computers for facilitating communications between the first and second processes that are each used with backup or restore operations over the network (col. 1, lines 27-49, col. 5, lines 26-46, and fig. 2); a second communication mechanism residing on both the first and second computers for facilitating communication between the first and second processes through the data storage system (col. 1, lines 50-61). Ji fails to teach, means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system. Ofek teaches, means within the first and second processes for allowing the first and second processes to determine whether a communication from the first and second processes is from the first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system (col. 3, lines 27-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a means within the first and second processes for allowing the first and second processes to determine whether a communication from the

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first and second processes is from the first or second communication mechanism, wherein, in response to determining if a communication is from said first communication mechanism then communicating over said network and in response to determining if a communication is from said first communication mechanism then communicating through said data storage system and to modify in Ji because such a modification would allow Ji to have a communication interface linked to the communication interface of the first and second computer system for facilitating processes over a network.

With respect to claim 2, Ji teaches, the first and second processes are part of a backup or restore process (col. 10, lines 21-55).

With respect to claim 3, Ji teaches, at least one first communication mechanism is a network socket (col. 6, lines 28-31 and col. 8, lines 36-44). Network communications and socket calls used over the network are well known to anyone skilled in the art, as described in Applicants' Specification on page 18.

With respect to claim 4, Ji teaches, the second communication mechanism is a data storage system socket (col. 8, lines 46-58).

With respect to claim 5, Ji teaches, the backup and restore operations are capable of backing up and restoring information from a file system (col. 20, lines 10-29).

With respect to claim 6, Ji teaches, (a) establishing at least one first connection over a network between first and second processes that are each used with backup or restore operations and that are each residing on different

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computers, wherein, in response to determining if a communication is from the first communication mechanism then communicating over the network and in response to determining if a communication is from the first communication mechanism then communicating through the data storage system (col. 8, lines 18-24 and lines 53-58). Ji fails to teach, (b) establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system. Ofek teaches, (b) establishing in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system (col. 5, lines 25-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to establish in parallel with at least one first connection a second connection through a data storage system between the first and the second processes, wherein the second connection is configured to be responsively used for communication over the data storage system and to modify in Ji because such a modification would allow Ji to connect to a client and then to a server where the data is stored on a network.

With respect to claim 7, Ji teaches, creating a first pair of communication mechanisms on a designated port, wherein the first pair

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includes a first communication mechanism and a second communication mechanism (col. 11, lines 14-53).

With respect to claim 8, Ji teaches, requesting the first communication mechanism pair a connection to the second communication mechanism pair (col. 10, lines 6-29) and in response to the connection request, accepting the connection request (col. 10, 31-34 and lines 49-55).

This dependent claim is also rejected for the similar rationale as claim 7.

With respect to claim 9, Ji teaches, creating a second pair of communication mechanisms on the designated port, wherein the second pair includes a first communication mechanism and a second communication mechanism and wherein the second pair of communication mechanisms is used for transferring a different type of information than would be transferred over the first pair of communication mechanisms (col. 10, lines 54-55 and col. 11, lines 4-53).

This dependent claim is also rejected for the similar rationale given for claim 7.

With respect to claim 10, Ji teaches, requesting with the first communication mechanism of the second pair of communication mechanisms, a connection to the second communication mechanism of the second pair of communication mechanisms (col. 12, lines 1-17).

This dependent claim is rejected for the similar rationale given for claim 8.

With respect to claim 11, Ji teaches, creating a third pair of communication mechanisms on a second designated port, wherein the third pair includes a first communication mechanism and a second communication mechanism (col. 8, lines 59-67 and col. 9, lines 1-67).

With respect to claim 12, Ji teaches, requesting the first communication mechanism of the third pair of communications mechanisms a connection to the second pair of communications mechanisms (col. 8, lines 18-54).

This dependent claim is rejected for the similar rationale given for claims 8, 10, and 11.

With respect to claim 13, Ji teaches, receiving information about a group of resources in the data storage system (col. 5, lines 28-46); in response to receiving information about the group of resources, creating a fourth pair of communication mechanisms, wherein the fourth pair includes a first communication mechanism and a second communication mechanism (col. 9, lines 51-67); and connecting the first communication mechanism and the second communication mechanism of the fourth pair of communication mechanisms to each other through the data storage system (col. 10, lines 18-31 and lines 49-55).

With respect to claim 14, this dependent claim is rejected for the similar rationale given for claim 1.

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With respect to claim 15, Ji teaches, identifying resources on a data storage device to be used in order to transfer information through the data storage device (col. 5, lines 26-43).

This claim is also rejected for the similar rationale given for claims 6 and 13.

With respect to claim 16, this dependent claim is rejected for the similar rationale given to claims 1 and 5.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Stevens (US 6,145,088) disclosed remote data recovery of inaccessible data on computer storage devices.

Winkler (US 6,151,709) disclosed a first computer system and a second computer system.

Inquiries

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read "E. Colbert", with a stylized flourish at the end.

E. Colbert
October 30, 2003